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IN THE

Supreme Court of the United States

October Term, 1940.

No. 817.

ROYAL INDEMNITY COMPANY,
Petitioner,

AGAINST

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF FOR PETITIONER.

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Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Respectfully the authorities cited by Respondent at page 7 of its brief are not in point with the fact situation of the case at bar and are distinguishable.	
Even if the commissioner was vested with power to superintend collection. He, and the government, if not actually directing and consenting thereto, at least acquiesced in the acts of collectors in accepting surety bonds, staying collection and releasing liability thereof	2-3

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There is a typographical error on page 2 of Petitioner's Main Brief wherein it is stated certiorari was granted March 7. This should be corrected to read April 7.

The facts stated under subhead of "Statement of the Case," on pages 2 and 3 of Petitioner's Main Brief are correct, but some of the citations to number of the pages are incorrect. This results, because they refer correctly to the

number of the pages of the certified copy of the record furnished by the Circuit Court of Appeals, instead of the printed record reprinted since certiorari was granted the number of the pages being reduced and changed. Since there is substantially no difference between the Statement of Fact in Petitioner's and Respondent's briefs there will result little, if any confusion. On page 15 of Petitioner's brief appears another error after the word county following figures 98, should be corrected by eliminating "PP" and in lieu "P" (for Pacific).

The authorities, *Erskine v. Hohnbach*, 14 Wall. 613, 616; *Harding* v. *Woodcock*, 137 N. S. 43, 46; *Tait* v. *Western Md. Ry. Co.*, 289 N. S. 620, 627; *Moore Ice Cream Co.* v. *Rose*, 289 N. S. 373, 380-381, cited on page 7 of Respondent's brief, respectfully are not in point with the fact situation of the case at bar. No surety bond was involved in those cases as here. The court, among other things, said the collector was without power to revise the assessment certified to him and must proceed to collect the tax and in the first two cases held he was protected as against an action of trespass. The last two cases cited were suits against the collector by taxpayers to recover refund of taxes paid and did not involve a surety bond. In the case at bar the collector did not undertake to revise or change the amount of the assessment certified and did not refuse to proceed to collect the tax as against the taxpayer. In the case at bar in the process of collecting the tax and discharging his duty the collector accepted a surety bond and merely suspended collection of the tax and finally released liability of the bond, but not the tax. It remains unrevised and could still be enforced as against the taxpayer. It is plain that Sections 3183 and 321 of the Revised Statutes grant certain powers without direction as to how the power shall be executed. Therefore in the process of collection impliedly the collector could accept a surety bond and release liability thereof. Even granting that the commissioner under a proper construction of the statutes was vested with power of supervision over the

collection of taxes in the exercise of the power the commissioner and the government, if not directing and consenting thereto had at least acquiesced in the acts of the collector in accepting surety bonds, suspending collection and discharging sureties from liability thereof in the process of collection of taxes. (See pp. 10 and 11, and footnote 3, Petitioner's Main Brief.)

Respectfully submitted,

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